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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SAM CLAYTON, )  
Plaintiff, ) No. C 07-2781 CW  
v. )  
Secretary of Dept of Homeland Security, aka )  
MICHAEL CHERTOFF; )  
Director of U.S. Citizenship and Immigration )  
Services, aka EDUARDO AQUIRE; )  
Deputy District Director of U.S. Citizenship )  
and Immigration Services' San Francisco Office, )  
aka DAVID STILL; )  
Director of FBI aka ROBERT S. MUELLER; )  
Attorney General; )  
Department of Homeland Security; U.S. )  
Citizenship and Immigration Services; FBI; )  
United States; )  
Defendants. )  
\_\_\_\_\_  
)

**ANSWER**

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of  
Mandamus and Declaratory Judgment.

1. Paragraph One consists of Plaintiff's conclusions of law for which no answer is necessary;  
however, to the extent a response is deemed to be required, the Defendants deny that they have  
improperly withheld action on Plaintiff's application to his detriment.

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## PARTIES

2. Defendants admit the allegations in Paragraph Two.
3. Defendants admit that Michael Chertoff is the Secretary of Homeland Security.
4. Defendants admit the allegations in Paragraph Four.
5. Defendants admit the allegations in Paragraph Five with the exception that Rosemary Elville is the District Director of District 21.
6. Defendants admit the allegations in Paragraph Six.

## JURISDICTION

9       7. Paragraph Seven consists of Plaintiff's allegation regarding jurisdiction, to which no  
10 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,  
11 Defendants deny the allegations in this paragraph.

## VENUE

8. Defendants admit the allegations in Paragraph Eight.

## EXHAUSTION OF REMEDIES

9. Defendants deny the allegations in Paragraph Nine.

## CAUSE OF ACTION

17 10. Defendants admit the allegations in Paragraph Ten.

18 11. Defendants admit the allegations in Paragraph Eleven with the exception that the I-130 was

19 filed initially at the National Benefits Center through the Chicago Lockbox as required on August

20 14, 2006.

21 12. Defendants are without sufficient information to admit or deny the allegations in Paragraph

22 Twelve.

23 13. Defendants admit that the application is pending with USCIS; however, Defendants deny

24 the remaining allegations in Paragraph Thirteen.

25 14. Defendants deny the allegations in Paragraph Fourteen.

26 15. Defendants deny the allegations in Paragraph Fifteen.

27 16. Defendants deny the allegations in Paragraph Sixteen.

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1 17. Defendants are without sufficient information to admit or deny the allegations in Paragraph  
2 Seventeen.

3 18. Paragraph Eighteen consists of Plaintiff's conclusions of law for which no answer is  
4 necessary; however, to the extent a response is deemed necessary, the Defendants deny the  
5 allegations in Paragraph Eighteen.

6 19. Defendants are without sufficient information to admit or deny the allegations in Paragraph  
7 Nineteen.

8 **PRAYER**

9 20. Paragraph Twenty consists of Plaintiff's prayer for relief, to which no admission or denial  
10 is required; to the extent a responsive pleading is deemed to be required, Defendants deny this  
11 paragraph.

12 **FIRST AFFIRMATIVE DEFENSE**

13 Plaintiff's complaint fails to state a claim upon which relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction.

16 WHEREFORE, Defendants pray for relief as follows:

17 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint  
18 with prejudice; that Plaintiff take nothing; and that the Court grant such further relief as it deems  
19 just and proper under the circumstances.

20 Dated: August 14, 2007

Respectfully submitted,

21 SCOTT N. SCHOOLS  
22 United States Attorney

23 /s/  
24 ILA C. DEISS  
25 Assistant United States Attorney  
26 Attorneys for Defendants

## CERTIFICATE OF SERVICE

Clayton v. Chertoff, No. 07-2781

3 The undersigned hereby certifies that she is an employee of the Office of the United States  
4 Attorney for the Northern District of California and is a person of such age and discretion to be  
5 competent to serve papers. The undersigned further certifies that she caused a copy of:

## ANSWER

7 to be served this date on the party(ies) in this action, by placing the true copy thereof, addressed as  
8 follows:

9 Sam Clayton  
1049 Market Street, #203  
11 San Francisco, CA 94103

First Class Mail by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with the office's practice.

13 Facsimile (FAX) Telephone No. \_\_\_\_\_

## 14 Personal Service (Messenger)

15 Federal Express

16 I declare under the penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct.

18 | Dated: August 14, 2007

TIFFANI CHIU  
Paralegal Specialist

ANSWER  
C 07-2781 CW